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## FAX COVER SHEET

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NAME: Scott Thomas, Chairman

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# MASSACHUSETTS DEMOCRATIC PARTY



Joan M. Menard  
Chair

October 5, 1993

BY FAX AND FEDERAL EXPRESS

Chairman Scott E. Thomas  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: AOR 1993-17

Comment On  
AOR 1993-17

Dear Chairman Thomas:

On behalf of the Democratic State Committee of Massachusetts, ("DSC") this letter shall serve as a response to the September 13th letter from the Office of Campaign & Political Finance ("OCPF") concerning the advisory opinion sought by the DSC of Massachusetts. As the former General Counsel to OCPF from 1982 through 1987, I believe I bring to the following analysis not only an understanding of state campaign finance law, but also a respect for and understanding of the jurisdiction of that agency to interpret and enforce the statute which it is empowered by law to administer.

This issue first arose when OCPF issued an Interpretive Bulletin on April 15, 1993 entitled "Relationship Between Federal Allocation Requirements and Massachusetts State Law." At the outset, OCPF attempts to characterize this issue as a conflict between federal regulations and state law. Indeed, this is simply not true. There is no state law which imposes the requirements set forth in the OCPF bulletin, nor is there any regulation, and the analysis set forth in the Bulletin reflects the utter lack of legal authority for its position. OCPF cannot point to any specific statutory or regulatory provision which requires that "the state party's state regulated committee must also pay the full amount of the state share permitted by federal regulation for any state election activity from funds in the state party committee's state depository account." OCPF-IB-93-01, Part II, paragraph 5. Instead, it relies on various provisions of state law, none of which contain the requisite language, and concludes that "reading the statute as a whole, it is OCPF's opinion . . . " that state party committees must comply with the requirements of the Bulletin. OCPF's attempt to create state law out of whole cloth is most obvious in its extraordinary attempt to impose filing requirements that are nowhere to be found in state law.

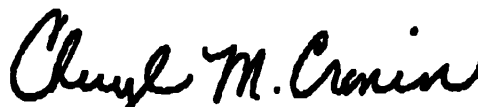
While one might be sympathetic to OCPF's interest in retaining as much jurisdiction as possible over state party committees, the attempt to do so without sufficient legal authority and with a disregard for the preemptive nature of federal law is quite astounding. While the Bulletin purports to interpret state law and its application to the state committees, it is at its heart an interpretation of regulations promulgated by the FEC. Indeed, OCPF's preparation of the Schedule HIs as a portion of the Bulletin underscores this point.

The interpretation of federal regulations, and the appropriate filing of federal forms, are matters solely within the authority of the FEC. OCPF's view, as reflected in the September 13th letter, that the Bulletin's requirements are appropriate since it is "tailored" to federal law, reflects a significant misunderstanding of the nature of preemption. In OCPF's view, each state would be free to interpret FEC regulations, to apply that interpretation to their own state parties and to accommodate within the framework of federal law and regulation their own state laws. This would necessarily result in state committees in various states being subjected to various applications of federal law, such as here where the state is attempting to apply federal law in a manner which denies to the state committee options which the federal regulation has specifically provided. Such an attempt by OCPF makes a mockery of preemption as provided for by federal law, and of the sole authority of the FEC to interpret that law.

We respectfully urge that you consider the above in your deliberations concerning a response to our advisory opinion request. We hope that you will not place the imprimatur of the FEC on OCPF's disregard of the preemptive nature of federal law, and its disregard of the appropriate interpretation and application of state law. We also wish to express our support for the analysis and conclusions contained in the letter filed with you today by the Democratic National Committee on this subject.

Please do not hesitate to contact me should you have any questions concerning this matter.

Very truly yours,



Cheryl M. Cronin  
Deputy Legal Counsel